IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	1 CA-CV 04-0803
	)	
PATRICIA MURPHREE,	)	DEPARTMENT B
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
RANDALL MURPHREE,	)	Procedure)
	)	**FILED 11/17/05**
Respondent/Appellant.	)	
	)	

Appeal from the Superior Court of Maricopa County

Cause No. DR1995-007321

The Honorable George H. Foster, Jr., Judge

AFFIRMED IN PART; REMANDED

Patricia Murphree — Glendale
In Propria Persona

Randall Murphree — Prescott Valley
In Propria Persona

T H O M P S O N, Judge

¶1 Randall Murphree (husband) appeals from the trial court's order denying his request to find no child support arrearage and the subsequent judgment against him for the arrearage. For the following reasons, we affirm in part but remand for a redetermination of the amount of child support arrearage due.

¶2 On April 27, 1995, Patricia Murphree (wife) petitioned for dissolution of her marriage to husband. The couple had two

minor children. On October 5, 1995, the trial court entered a decree of dissolution of the couple's marriage. Wife received custody of the children subject to visitation by husband. Husband was ordered to pay wife $681 per month in child support and an undetermined amount of spousal maintenance commencing November 1, 1995.

¶3 On April 5, 2004, husband filed a petition for an order to show cause to find that no child support was due and to stop child support wage assignment. Husband also sought reimbursement for overpayment and attorneys' fees and costs. Both children were no longer minors at that time.

¶4 Husband asserted that the administrative order that ordered garnishment of his wages for payment of the arrearage was based on the false belief that wife had physical custody of the minor children after the divorce when, according to husband, wife only saw the children approximately once every six months except for one week when the son lived with her. The children lived with other relatives until the daughter became pregnant and moved in with the baby's father, and the son began residing with husband until 2003. Therefore, husband asserted that, because wife never had physical custody of the children and did not provide housing food, clothing, or other life necessities, it would be inequitable for the proceeds of the assignment to be paid to her for the alleged arrearage in child support.

¶5 Husband requested that proceeds of the wage assignment be held by the clerk of court pending a hearing on husband's petition. The trial court granted that request. After an evidentiary hearing, the trial court determined that the relief requested by husband essentially was a motion to modify the child support award because the children did not live with mother, who did not support them. In addition, husband was incarcerated from 1999 to 2003, a normal "basis for requesting relief from a child support order." Husband, however, did not expressly request relief on that basis. The trial court determined that it could not grant the requested relief because husband sought retroactive modification of the child support order that was untimely. In addition, the trial court declined to grant equitable relief because husband had "not done" equity by failing to make child support payments as ordered until after the children were emancipated. As to any payments made, the trial court ordered that they be credited against any sums that husband accrued since the divorce decree was entered in 1995 and that husband was not entitled to any reimbursement.

¶6 The parties stipulated that wife should be granted a judgment against husband in the amount of $100,481.37, and an order for that amount was later entered. Husband appeals from the August 6, 2004 order denying his requested relief as well as the order signed on October 14, 2004 and filed on October 20, 2004 directing judgment against husband for the amount of the arrearage.

¶7 At the outset, we note that, although both parties represent themselves on appeal, their briefs do not comply with the Arizona Rules of Civil Appellate Procedure. The opening brief fails to contain a table of contents or table of citations or a separate statement of facts, statement of issues, or "[a]n argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." ARCAP 13(a); *Lake Havasu City v. Ariz. Dep't of Health Servs.*, 202 Ariz. 549, 553, ¶ 14, n.4, 48 P.3d 499, 503 (App. 2002) (citing ARCAP 13(a)(6) for proposition that an opening brief must contain argument with citation to legal authority); *State Farm Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990) (declining to consider issues where appellant failed to state contentions or reasoning therefor or cite to any authority or portions of the record).[1] The opening brief does contain appended

[1]Husband's opening brief includes a section listing "information not provided" to the trial court by husband's attorney, where husband lists "facts" regarding his wife and children as well as statements indicating his displeasure with his attorney below. The information listed therein contains no record references, and, due to the lack of a transcript of the evidentiary hearing below on appeal, we cannot determine which "facts" were or were not presented below. By husband's own admission, the information that he set forth in that part of his opening brief, however, was not presented below. Therefore, we cannot consider that information on appeal. *See Crowe v. Hickman's Egg Ranch, Inc.*, 202 Ariz. 113, 116, ¶ 16, 41 P.3d 651, 654 (App. 2002) (issues not properly raised below are waived on appeal).

documents.[2] Wife's answering brief also fails to contain an argument with citation to authority. *See* ARCAP 13(b) (setting forth requirements of answering brief). Despite the parties' failure to comply with ARCAP 13, we are aware that the issue on appeal is whether the trial court properly denied husband's request that the trial court find no arrearage. *Lake Havasu City*, 202 Ariz. at 553, ¶14, n.4, 48 P.3d at 503 (deciding that despite appellant's failure to comply with ARCAP 13(a)(6), appellate court would discuss an "important" issue).

¶8 In husband's opening brief, he states that (1) wife misled the trial court before the original divorce decree, leading the trial court to believe that the children lived with her; (2) husband did not receive information regarding filing a request for relief from his child support obligations while incarcerated; and (3) wife is not entitled to child support because the children did not live with her. We decline to reverse on these bases.

¶9 First, husband did not designate any transcripts[3] on

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[2]Husband attaches portions of the trial court record to his brief. However, simply appending portions of the trial court record does not satisfy ARCAP 13(a)(6). *See Lake Havasu City*, 202 Ariz. at 553, ¶14, n.4, 48 P.3d at 503 (noting that appending cited parts of record to a reply brief does not cure the failure to comply with ARCAP 13(a)(6) in an opening brief). Husband also attaches documents to his brief that were not part of the trial court record and that we therefore cannot consider on appeal.

[3]We note that a CD of the evidentiary hearing was made in lieu of having a court reporter present. However, husband still failed to include a copy of the CD or transcription thereof as part of the record on appeal.

appeal, and so we cannot determine whether the trial court relied on erroneous information. *See* ARCAP 11(b) (if "appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion"). Second, as the trial court noted, husband never expressly requested relief on the basis of his incarceration. Third, the trial court already considered the fact that the children did not live with wife during the time when child support was owed to her by husband and concluded that husband's request for retroactive relief came too late.

¶10 Husband also contends that the dates used to calculate the amount of child support due were incorrect. The child support arrearage was calculated from February 1983 to August 2004. The October 1995 dissolution decree ordered child support payments to commence on November 1, 1995. The state gave notice of the amount of child support arrearage it sought, using February 1983 as a starting date, on June 7, 2004 before the evidentiary hearing. Based on the record on appeal, which again contains no transcript of the hearing, it does not appear that husband objected to the dates used. Although such may ordinarily constitute waiver on appeal, because the starting date for the child support arrearage calculation was twelve years before the parties' divorce, we remand for a redetermination of the amount of child support arrearage due

from husband. On remand, the trial court should inquire as to why the parties stipulated to an arrearage calculation based on an apparently erroneous start date.

¶11 For the foregoing reasons, we affirm the trial court's denial of husband's petition to find no child support arrearage due but remand for a redetermination of the amount of the arrearage.

_____
JON W. THOMPSON, Judge

CONCURRING:

_____
LAWRENCE F. WINTHROP, Presiding Judge

_____
JEFFERSON L. LANKFORD, Judge

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PATRICIA MURPHREE,	)	DEPARTMENT B
	)	
Petitioner/Appellee,	)	MARICOPA COUNTY
	)	Superior Court
v.	)	No. DR1995-007321
	)	
RANDALL MURPHREE,	)	**O R D E R**
	)	
Respondent/Appellant.	)	
	)	

The above-entitled matter was duly submitted to the Court. The Court has this day rendered its memorandum decision.

IT IS ORDERED that the memorandum decision be filed by the Clerk.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the memorandum decision be sent to each party appearing herein or the attorney for such party and to the Honorable George H. Foster, Jr., Judge.

DATED this day of _____, 2005.

_____
JON W. THOMPSON, Judge